

Exhibit B

Project # N005534
RMO (Original)
Billing
Contracts
Proj. Mgr. Jeff Colwell
Cy: Legal

Sub-Recipient Agreement

DATED AS OF _____

BETWEEN

DELPHI AUTOMOTIVE SYSTEMS LLC

AND

BATTELLE MEMORIAL INSTITUTE

General Terms And Conditions For
Sub-Recipient Agreement
TABLE OF CONTENTS

1.	TERM	1
2.	DESCRIPTION OF SERVICES	1
3.	SUB-RECIPIENT AGREEMENT AND ADMINISTRATION	1
4.	STATEMENT OF SUBSTANTIAL INVOLVEMENT	2
5.	SUB-RECIPIENT FUNDING	2
6.	ALLOWABLE PRE-AWARD COSTS	2
7.	SUB-RECIPIENT'S STAFF	3
8.	INVOICING AND PAYMENTS	3
9.	FINAL INVOICING	3
10.	DOCUMENTS INCORPORATED BY REFERENCE	3
11.	ORDER OF PRECEDENCE	3
12.	REPORTS	3
13.	DELPHI SUB-RECIPIENT RELATIONSHIP	3
14.	ASSIGNMENT	4
15.	CHANGES	4
16.	TERMINATION	4
17.	INDEMNIFICATION	4
18.	APPLICABLE LAWS AND GOVERNING LAW	4
19.	INSURANCE	5
20.	NONDISCRIMINATION	5
21.	SUBCONTRACTS	5
22.	DISCLOSURE OF INFORMATION	5
23.	COST PRINCIPLES	5
24.	COMPLIANCE WITH BUY AMERICAN ACT (JAN 2002)	5
25.	NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS - SENSE OF CONGRESS (JAN 2002)	5
26.	LOBBYING RESTRICTION (INTERIOR ACT, 2002) (JAN 2002)	6
27.	NOTICE REGARDING UNALLOWABLE COSTS AND LOBBYING ACTIVITIES (NOV 1998)	6
28.	EXAMINATION OF ACCOUNTS, RECORDS AND INSPECTION	6
29.	NON-PARTNERSHIP	6
30.	THIS ARTICLE INTENTIONALLY LEFT BLANK	6
31.	VALIDITY	6
32.	ENTIRE AGREEMENT	7
33.	FURTHER ASSURANCES	7
34.	WAIVER, DISCHARGE	7
35.	TITLE, USE AND DISPOSITION OF PROPERTY	7
36.	PROTECTION OF CONTRACTOR REAL PROPERTY AND EQUIPMENT	7
37.	EQUIPMENT CHARGES	7
38.	INTELLECTUAL PROPERTY PROVISIONS	7
38.1	PATENT COUNSEL	7
38.2	PUBLICATION OF RESULTS/ACKNOWLEDGMENT STATEMENT	8
38.3	SUB-RECIPIENT PRESS RELEASES	8
38.4	CONFIDENTIAL BUSINESS INFORMATION	8
38.5	RIGHTS IN TECHNICAL DATA (FE-INSPECTION) (SEP 1999)	8
38.6	52.227-1 AUTHORIZATION AND CONSENT (JUL 1995) ALTERNATE I (APR 1984)	9
38.7	52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 1996)	9
38.8	952.227-11 PATENT RIGHTS-RETENTION BY THE CONTRACTOR (SHORT FORM)	9
38.9	BATTELLE/DELPHI BUSINESS AGREEMENT	14
38.10	FAR 52.227-14 RIGHTS IN DATA-GENERAL (JUN 1987) WITH ALT. V (JUN 1987)	14
38.11	52.227-16 ADDITIONAL DATA REQUIREMENTS. (JUN 1987)	18
38.12	OBLIGATIONS AS TO PROTECTED ENERGY POLICY ACT (EPACT) INFORMATION (FEB 2001)	18
39.	NOTICES AND INVOICES	19
40.	SAFETY & HEALTH AND ENVIRONMENTAL PROTECTION	19
41.	PERMITS AND LICENSES	20

42.	RESTRICTIONS ON TRANSFER OF FUEL CELL TECHNOLOGY TO FOREIGN ENTITIES.....	20
43.	TESTING AND REPORTING	20
44.	EXECUTION IN COUNTERPARTS	20
45.	TITLES AND HEADINGS	20
46.	EXHIBITS.....	20
47.	MANDATORY FLOWDOWN PROVISIONS.....	20

EXHIBITS –

A	Milestone Schedule
B	Statement of Work
C	Cost Reporting Format and Instructions
D	Monthly Report

SUB-RECIPIENT AGREEMENT

This Sub-Recipient Agreement, including all documents incorporated by reference herein (the "Sub-Recipient Agreement"), dated as of _____ is made and entered into by and between Delphi Energy & Chassis Systems Division of Delphi Automotive Systems LLC, a Delaware limited liability company with its headquarters at 5725 Delphi Drive, Troy, Michigan 48098 (hereinafter "Delphi"), and Battelle Memorial Institute, an Ohio non-profit corporation having its place of business at 505 King Avenue, Columbus, Ohio 43201 (hereinafter "Battelle" or the "Sub-Recipient").

RECITALS

WHEREAS, Delphi's goal is to develop 5kW Solid Oxide Fuel Cell ("SOFC") power systems for the Solid State Energy/Conversion Alliance (SECA) a range of fuels and applications with DOE and,

WHEREAS, Delphi and Battelle submitted a proposal to DOE in response to solicitation number DE-PS26-00NT40854, Development of a Solid Oxide Fuel Cell System/January 18, 2001 ("Delphi's Proposal") and,

WHEREAS, Delphi's Proposal was subsequently accepted by DOE and resulted in Delphi's receipt from DOE, of Financial Assistance Award No. DE-FC26-02NT41246 (hereinafter "Cooperative Agreement") of which this Sub-Recipient Agreement is entered into in furtherance of the work provided for in said Cooperative Agreement and,

WHEREAS, Battelle, since February 1, 2002, has been performing as a subcontractor to Delphi, against certain program requirements as set forth in the Statement of Work in Delphi's Proposal and as set forth in Battelle's letter Proposal No. CP050981 to Delphi dated March 7, 2002, and,

WHEREAS, the parties desire to set forth the terms and conditions under which Battelle will continue to participate in the development of 5kW SOFC power systems for a range of fuels and applications ("the Project").

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations contained herein, the parties agree as follows:

GENERAL TERMS AND CONDITIONS

1. TERM

The term of this Sub-Recipient Agreement shall commence on July 1, 2002 and shall terminate on December 30, 2003 unless sooner terminated as provided for in paragraph 16, TERMINATION, herein or amended by mutually executed modification to this Sub-Recipient Agreement by both parties.

2. DESCRIPTION OF SERVICES

Battelle is hereby appointed as Sub-Recipient in connection with certain aspects of the project and shall provide those services as set forth in the STATEMENT OF WORK detailed in Exhibit B, attached hereto and made a part hereof.

3. SUB-RECIPIENT AGREEMENT AND ADMINISTRATION

Notwithstanding any other provisions of this Sub-Recipient Agreement or any document referenced herein, Delphi's Manager of Government Contracts is the only individual authorized to make the changes in, or redirect in writing, the work required by this Sub-Recipient Agreement. Where Delphi's approval is required under the terms of this Sub-Recipient Agreement, it shall be construed to mean the approval of the Director of Government Contracts, unless otherwise specified to be the Delphi Project Manager. In the event the Sub-Recipient effects any change at the direction of any other person, the change will be considered as having been made without authority and an adjustment will not be made in the Sub-Recipient Agreement cost or

schedule as a result thereof. No Sub-Recipient Agreement or understanding will be binding on Delphi unless made in writing and signed by the above-authorized representative.

4. STATEMENT OF SUBSTANTIAL INVOLVEMENT

There will be substantial involvement between the DOE, Delphi and Sub-Recipient during the performance of the Project under this Agreement.

The Government has the right to inspect and evaluate the work performed or being performed under this Sub-Recipient Agreement, including the premises where the work is being performed, at all reasonable times and in a manner that will not unduly delay the work and subject to applicable security, environment, health and safety requirements. If the Government performs inspection or evaluation of Delphi's or Sub-Recipient's premises, Delphi or Sub-Recipient, and any subcontractor, shall furnish all reasonable facilities and assistance for the safe and convenient performance of these duties. The extent and nature of the inspection shall be at the discretion of the DOE. In addition, the DOE may require at its discretion, as part of the Cooperative Agreement performance, to have any or all the prototypes sent to NETL for further testing following completion of the required Industrial Team testing.

5. SUB-RECIPIENT FUNDING

(a) Delphi shall provide funding for the Project Budget Period I in the total amount of \$7,845,607. This Sub-Recipient Agreement is to be incrementally funded. Under the Cooperative Agreement, the DOE has currently obligated \$10,150,000 and anticipates, subject to the availability of additional funds, obligating additional funds. Delphi hereby obligates funding in the amount of \$7,845,607 to the Sub-Recipient. The Sub-Recipient shall not be obligated to continue performance of the Project beyond the obligated amount and Delphi is under no commitment to provide additional funding to the Sub-Recipient beyond the obligated herein.

(b) The Sub-Recipient shall submit funding documentation of all expenditures with each invoice and in accordance with Exhibit C, COST REPORTING FORMAT AND INSTRUCTIONS.

(c) The parties intend that support documents with monthly invoices shall be computer printouts of monthly project costs and that detailed supporting documents shall not be required on a regular basis but will be required on a sampling basis during audit. Delphi reserves the right to request detail backup for any unusual expenditure appearing on a monthly invoice printout for individual high value or extraordinary items for the nature of the work being performed.

(d) To minimize any interruption due to lack of funds, the Sub-Recipient must notify Delphi in writing whenever the amount of funds expended under this Sub-Recipient Agreement, when added to anticipated costs in the next sixty (60) days, will exceed 75% of the amount obligated by this Sub-Recipient Agreement.

(e) The Sub-Recipient is not obliged to continue performance or otherwise incur costs in excess of the amount then obligated by this Sub-Recipient Agreement until Delphi notifies the Sub-Recipient, in writing, that the amount obligated by the Sub-Recipient Agreement has been increased and specifies an increased amount, which then constitutes the total amount obligated by this Sub-Recipient Agreement. If the amount obligated by the Sub-Recipient Agreement is increased, any costs the Sub-Recipient incurs before the increase that are in excess of the amount previously obligated by the Sub-Recipient Agreement, must be allowable to the same extent as if incurred afterward, unless Delphi issues a termination notice and directs that the increase is solely to cover termination expenses.

6. ALLOWABLE PRE-AWARD COSTS

(a) Sub-Recipient is entitled to receive reimbursement of pre-award costs associated with performance of Tasks 2, 2a, of the attached Statement of Work, incurred during the period starting February 2, 2002 through the effective date of this Sub-Recipient Agreement.

(b) Battelle has submitted to Delphi and Delphi has paid Battelle in full, invoices, in the total amount of \$6,071,503.52 for costs associated with the performance of Tasks 2 and 2a under the attached Statement of Work from the period of February 2, 2002 through June 30, 2003.

7. SUB-RECIPIENT'S STAFF

- (a) During the term of this Sub-Recipient Agreement, Sub-Recipient shall provide and maintain sufficient qualified employees, agents and personnel to perform its duties and obligations hereunder.
- (b) Sub-Recipient and its employees, agents and personnel shall obtain and maintain all appropriate licenses, permits, credentials and certificates required by all local, State and/or federal laws, rules, regulations, guidelines and directives for the operation of its facilities and for the provision of services hereunder.

8. INVOICING AND PAYMENTS

- (a) Sub-Recipient shall be reimbursed for costs incurred in accordance with Exhibit B, STATEMENT OF WORK, Exhibit C, COST REPORTING FORMAT, and Exhibit D, MONTHLY REPORT FORMAT. The maximum amount payable by Delphi to Battelle, under this Sub-Recipient Agreement for the Project shall not exceed **\$7,845,607**.
- (b) Delphi will withhold ten percent (10%) of Government funds pending approval of the final report, government audit and Delphi's Cooperative Agreement closure.

9. FINAL INVOICING

- (a) Prior to closeout of this Sub-Recipient Agreement, Sub-Recipient shall submit to Delphi a final invoice, Exhibit C, in the form of a final invoice, Cost Reporting Format.
- (b) The Sub-Recipient shall bear all its costs and expenses that are not accepted for payment by DOE, unless Delphi, in consultation with DOE, determines otherwise.

10. DOCUMENTS INCORPORATED BY REFERENCE

This Sub-Recipient Agreement includes by this reference, the following documents: 1) The provisions of U.S. Department of Energy Cooperative Agreement No. DE-FC26-02NT41246 as they apply to Sub-Recipients, sub-contractors and Sub-Recipient Agreements; 2) the exhibits identified herein; 3) DOE Assistance Regulations, 10 CFR Part-600; and 4) Delphi's Proposal, dated January 18, 2001.

11. ORDER OF PRECEDENCE

In case of conflict between or among this Sub-Recipient Agreement and the documents incorporated by reference, the provisions of the following documents shall take precedence in the following order: 1) this Sub-Recipient Agreement (including the Exhibits identified herein); 2) the Cooperative Agreement No. DE-FC26-02 NT 41246; 3) DOE Assistance Regulations, 10 CFR Part -600; and 4) Delphi's Proposal, dated January 18, 2001.

12. REPORTS

The Sub-Recipient shall submit reports to Delphi's Program Manager in accordance with Exhibit A, MILESTONE SCHEDULE, Exhibit B, STATEMENT OF WORK, and Exhibit D, MONTHLY REPORT FORMAT. Failure to submit reports in accordance with these Exhibits may result in delayed or withheld payments.

13. DELPHI SUB-RECIPIENT RELATIONSHIP

Sub-Recipient agrees to act in an independent capacity as an independent contractor in conducting all its activities, operations and programs funded by this Sub-Recipient Agreement. Delphi shall, for no purpose, be deemed an agent, partner of, or in association or affiliation with Sub-Recipient in any capacity or relationship other than a mere conduit of funds for conducting authorized programs and as an enforcer of rules and regulations pertaining to the expenditure of such funds in furtherance of Delphi's projects as provided by this Sub-Recipient Agreement.

takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

(g) Debarment and Suspension (E.O.'s 12549 and 12689). No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Non-procurement Programs in accordance with E.O.'s 12549 and 12689, "Debarment and Suspension." This list contains the names of parties debarred, suspended or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officers to execute this Sub-Recipient Agreement as of the dates listed below, but to take effect as of the date first above written.

Dated: 2/18/04

BATTELLE MEMORIAL INSTITUTE

By: Adonka James
Title: Contracting Officer

DELPHI ENERGY & CHASSIS SYSTEMS DIVISION
DELPHI AUTOMOTIVE SYSTEMS LLC

Dated: 23 February 04

By: [Signature]
Title: Executive Director

EXHIBIT C

COST REPORTING FORMAT AND INSTRUCTIONS

The recipient shall submit on a monthly basis a statement of cost for the expenditures incurred during the reporting period in the following format:

Budget Period I

Task 2 Stack Development-Billable to DOE	\$6,086,628
Labor	
Travel	
Labor-Small Jobs @ 80%	
Task 2a Stack Development-Not Billable to DOE	\$1,058,979
Non Labor-Small Jobs @ 20%	
Other Contractors	
Purchases / Supplies	
Task 8 Program Management	<u>\$700,000</u>
Total	\$7,845,607

MAR 15 2004

Project # N005534
RMO (Original)
Billing
Contracts
Proj. Mgr. Jeff Colwell
cy. Legal

March 2, 2004

Ms. Ladonna James
Contracting Officer
Battelle Memorial Institute
505 King Avenue
Columbus, OH 43201-2693

SUBJ: MODIFICATION NO. 1 TO SUB-RECIPIENT AGREEMENT BETWEEN
BATTELLE MEMORIAL INSTITUTE AND DELPHI AUTOMOTIVE SYSTEMS LLC.

Dear Ms. James:

The following paragraph of the subject agreement is hereby modified as follows:

1. Term

The term of this Sub-Recipient agreement shall commence on July 1, 2002 and shall terminate on December 31, 2005 unless sooner terminated as provided for in paragraph 16, TERMINATION, herein or amended by a mutually executed modification to this Sub-Recipient Agreement by both parties.

All other terms and conditions of the Sub-Recipient Agreement are incorporated herein and made a part hereof as if such terms and conditions were set forth in this Modification. By their execution and delivery of this Modification, the parties reaffirm all of the terms and conditions of the Sub-Recipient Agreement except as modified hereby.

Delphi Automotive Systems LLC

Dated: 3.09.04

By: [Signature]
Dr. Andrew Brown, Jr.
Title: Executive Director – Engineering
Competency, DTI/Research Labs, Product
Government Affairs & Partnerships

Battelle Memorial Institute

Dated: 3/15/04

By: [Signature]
Title: Contracting Officer

DELPHI

January 31, 2005

Ms. Ladonna James
Contracting Officer
Battelle Memorial Institute
505 King Avenue
Columbus, OH 43201-2693

**SUBJ: MODIFICATION NO. 2 TO SUB-RECIPIENT AGREEMENT BETWEEN
BATTELLE MEMORIAL INSTITUTE AND DELPHI AUTOMOTIVE SYSTEMS LLC.**

Dear Ms. James:

The following paragraphs of the subject agreement are hereby modified as follows:

1. 1. Sub-Recipient Funding

(a) "Delphi shall provide funding for the Project in the total amount of **\$12,177,254**. This Sub-Recipient Agreement is to be incrementally funded. Under the Cooperative Agreement, the DOE has currently obligated \$15,929,278 and anticipates, subject to the availability of additional funds, obligating additional funds. Delphi hereby obligates funding in the amount of **\$12,177,254** to the Sub-Recipient. The Sub-Recipient shall not be obligated to continue performance of the Project beyond the obligated amount and Delphi is under no commitment to provide additional funding to the Sub-Recipient beyond the obligated herein."

2. 8. Invoicing and Payments

(a) "Sub-Recipient shall be reimbursed for costs incurred in accordance with Exhibit B, STATEMENT OF WORK, Exhibit C, COST REPORTING FORMAT, and Exhibit D, MONTHLY REPORT FORMAT. The maximum amount payable by Delphi to Battelle, under this Sub-Recipient Agreement for the Project shall not exceed **\$12,177,254**."

3. Exhibit B, Statement of Work for Battelle PNWD on SECA Vertical Team Subcontract, is deleted in its entirety and replaced with the attached Exhibit B, Statement of Work for Battelle PNWD on SECA Vertical Team Subcontract.


4. Exhibit C, Cost Reporting Format, is deleted in its entirety and replaced with the attached Exhibit C, Cost Reporting Format.

Ms. LaDonna James
January 31, 2005
Page 2

All other terms and conditions of the Sub-Recipient Agreement are incorporated herein and made a part hereof as if such terms and conditions were set forth in this Modification. By their execution and delivery of this Modification, the parties reaffirm all of the terms and conditions of the Sub-Recipient Agreement except as modified hereby.


Delphi Automotive Systems LLC

Dated: 02.02.05

By: 
Dr. Andrew Brown, Jr.
Executive Director - Engineering
Competency, DTI/Research Labs, Product
Government Affairs & Partnerships

Battelle Memorial Institute

Dated: 2/11/05

By: 
Title: Contracting Officer

Ms. LaDonna James
January 31, 2005
Page 7

EXHIBIT C

COST REPORTING FORMAT AND INSTRUCTIONS

The Sub-Recipient shall submit on a monthly basis a statement of cost for the expenditures incurred during the reporting period in the following format:

Task 2 Stack Development – Billable to DOE	\$
Labor	
Travel	
Labor – Small Jobs @80%	
Task 2A Stack Development – Not Billable to DOE	\$
Non Labor – Small Jobs @20%	
Other Contractors	
Purchases/Supplies	
Task 8 Program Management	\$
Total Invoice:	\$